

COPY
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JUL 08 2021

Clark County Superior Court 21 2 0 4 2021
Case _____
Spencer, Clerk Clark Co.

Nathen Barton,

Plaintiff,

vs.

American Protection Plans LLC

Defendant

PLAINTIFF'S
ORIGINAL COMPLAINT AND
INJUNCTIVE RELIEF
AND DEMAND FOR JURY TRIAL**I. BASIS FOR JURISDICTION**

Plaintiff Nathen Barton is a natural person and resident of Clark County, Washington. All the acts alleged in this complaint occurred in Clark County, Washington State, during the year 2021.

Jurisdiction in this court is correct because of where Plaintiff resides, and his residence is a nexus where Plaintiff suffered personal injury and invasion of privacy at the hands of the Defendant.

II. STATEMENT OF CLAIM

On July 9, 2020, Plaintiff registered and paid for a Washington State (360) telephone area code cellular number to be primarily used by his minor child. It is a Protected Computer as it is used in a manner that affects interstate or foreign commerce or communication. The phone was on a very limited service plan, with each call, text, or data usage subtracting from a fixed amount of each available each month.

This (360) XXX XXXX number was registered on the FTC *do-not-call* registry more than 31 days before May 7, 2021, and all the telemarketing phone calls alleged in this complaint were made to this 360-area code number.

Plaintiff's Original Complaint for a Civil Case & Injunctive Relief Page 1 / 6

22 Residential Warranty". She went on to encourage Plaintiff to purchase a home warranty from

21 2 01264 06

Unsolicited Telemarketing Call #4

At or about 4:37pm on May 18, 2021, Plaintiff received a phone call, seemingly from 855 805 7351, and the caller introduced herself with "Hi, good evening this is Irina with American Residential Warranty". She went on to encourage Plaintiff to purchase a home warranty from ARW. At 36 seconds into the call, Plaintiff expressed that he did not want a home warranty. The caller continued the call another 45 seconds.

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Unsolicited Telemarketing Call #5

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At or about 11:47pm on May 20, 2021, Plaintiff received a phone call, seemingly from 855 416 7574, a number known to be used by ARW. Plaintiff believes the intent of this call was to encourage Plaintiff to purchase a home warranty from ARW.

Unsolicited Telemarketing Call #5

At or about 4:18pm on May 27, 2021, Plaintiff received a phone call, seemingly from 855 805 7351, and the caller introduced herself with "Hi, this Brenden calling with American Residential Warranty". He went on to encourage Plaintiff to purchase a home warranty from ARW.

Commercial Telephone Solicitors

RCW 19.158.050(1) mandates that:

"In order to maintain or defend a lawsuit or do any business in this state, a commercial telephone solicitor must be registered with the department of licensing."

Although RCW 19.158.050(3) says "The department of licensing shall issue a registration number to the commercial telephone solicitor.", in practice this Commercial Telephone Solicitor "registration number" appears as an endorsement on the business license issued by The Washington State Department of Revenue.

21 2 01264 06

1 APP does not have this endorsement on their business license, and they and their agents act
2 as unlicensed commercial telephone solicitors.

3 **These calls are annoying**

4 These messages are obnoxious and an invasion of privacy. Plaintiff specifically registered
5 the phone number on the FTC do not-call list to not have the phone ringing with unwanted sales
6 pitches. These five phone calls were initiated by APP to encourage Plaintiff to purchase goods
7 or services.

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8 **III. RELIEF**

9 **Federal Claims**

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10 Defendants violated the TCPA 47 U.S.C. 227(c)(5) by soliciting Plaintiff five (5) times
11 without his consent on his cell phone with phone number (360) XXX XXXX while he was
12 registered on the FTC do-not-call list.

13 **Washington State Claims**

14 APP and their agents who spoke to Plaintiff were not registered as Commercial Telephone
15 Solicitors with the Washington State Department of Licensing when any of the solicitation calls
16 were placed to Plaintiff, in violation of RCW 19.158.050(1) each time they called, for a total of
17 five (5) times.

18 Washington State RCW 19.158.110(1) says:

19 Within the first minute of the telephone call, a commercial telephone solicitor or
20 salesperson shall:

- 21 (a) Identify himself or herself, the company on whose behalf the solicitation is being
22 made, the property, goods, or services being sold; and
23 (b) Terminate the telephone call within ten seconds if the purchaser indicates he or
24 she does not wish to continue the conversation.

21 2 01264 06

1 Defendants violated Washington State RCW 19.158.110(1)(b) two (2) times by not
2 terminating the telephone call within ten seconds of Plaintiff indicating he did not wish to
3 continue the conversation.

4 Defendants violated Washington State RCW 19.158.150 five (5) times by soliciting
5 Plaintiff on his cell phone while they were not registered on with the Washington State
6 Department of Licensing as Commercial Telephone Solicitors, or while working on behalf of an
7 unregistered Commercial Telephone Solicitor.

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Treble Damages

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8
9 Plaintiff believes the record shows that Defendants' violations of the law were willful or
10 knowing. Therefore, Plaintiff asks for treble damages under TCPA 47 U.S.C. 227(c)(5) and
11 Washington State RCW 19.158.030.

Injunctive Relief

12
13 TCPA 47 U.S.C. 227(c)(5)(A) allows "an action based on a violation of the regulations
14 prescribed under this subsection to enjoin such violation."

15 Plaintiff asks this Court to enjoin the APP from calling phone numbers on the FTC *do-not-*
16 *call* list without consent.


All Possible Damages

17
18 Plaintiff prays for all possible damages, in law and in equity, statutory, real, and punitive,
19 that he might entitled too. Examples might be, but are not limited to, court costs, attorney fees,
20 pre-judgement interest, and post-judgement interest.

21 I declare under penalty of perjury under the laws of the state of Washington that the
22 foregoing is true and correct.
23

21 2 01264 06

1 Signed at Vancouver, WA on 7/8/2021

2
3
4 
5 (Nathen Barton)

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JUL 08 2021

Scott G. Weber, Clerk, Clark Co.

6 Nathen Barton
7 (718) 710-5784
8 4618 NW 11th Cir
9 Camas WA 98607

2
GAX

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2021 AUG 31 PM 1:24

SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT, IN AND FOR THE COUNTY OF CLARK, STATE OF WASHINGTON

NATHEN BARTON

Plaintiff/Petitioner

Cause No.: **21 2 01264 06**

Hearing Date:

vs.

AMERICAN PROTECTION PLANS LLC

Defendant/Respondent

DECLARATION OF SERVICE OF
SUMMONS; COMPLAINT

The undersigned hereby declares: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, and is competent to be a witness therein.

On the **24th day of August, 2021** at **12:43 PM** at the address of **711 CAPITOL WAY S STE 204, Olympia, Thurston County, WA 98501-1267**; this declarant served the above described documents upon **AMERICAN PROTECTION PLANS LLC c/o NATIONAL REGISTERED AGENTS, INC., REGISTERED AGENT** by then and there personally delivering 1 true and correct copy(ies) thereof, by then presenting to and leaving the same with **NATIONAL REGISTERED AGENTS, INC., REGISTERED AGENT**, I delivered the documents to **NATIONAL REGISTERED AGENTS, INC, REGISTERED AGENT** with identity confirmed by physical description. The individual accepted service in accordance with social distancing requirements (placed the documents in a clearly visible place at least six feet away from the subject and advised the subject to retrieve them after stepping away). The individual appeared to be a brown-haired white male contact 35-45 years of age, 6'0" -6'2" tall and weighing 200-240 lbs with a beard. Jeff Miner.

No information was provided or discovered that indicates that the subjects served are members of the United States military.

ORIGINAL PROOF OF SERVICE

PAGE 1 OF 2



For: **Nathen Barton <farmersbranch2014@gmail.com>**

Ref #: **REF-8648422**

Tracking #: **0075167124**



PLAINTIFF/PETITIONER: NATHEN BARTON	CASE NUMBER:
DEFENDANT/RESPONDENT: AMERICAN PROTECTION PLANS LLC	21 2 01264 06

Service Fee Total: **\$65.00**

Declarant hereby states under penalty of perjury under the laws of the State of Washington that the statement above is true and correct.

Date: 08/24/2021

Kevin Nakai

Kevin Nakai, Reg. # 3465919, Lewis County, WA

ORIGINAL PROOF OF SERVICE

PAGE 2 OF 2



For: Nathen Barton <farmersbranch2014@gmail.com>
Ref #: REF-8648422

Tracking #: 0075167124



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21 2 01264 06

JUL 08 2021 1:08

CASE TYPE 2

Scott G. Weber, Clerk, Clark Co.

CLARK

COUNTY SUPERIOR COURT

CASE INFORMATION COVER SHEET

Case Number _____ Case Title **Barton v American Protection Plans LLC**

Attorney Name _____ Bar Membership Number _____

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

Form Updated 12/28/2020

APPEAL/REVIEW

- ☐ Administrative Law Review (ALR 2)
☐ Appeal of a Department of Licensing Revocation (DOL 2)
☐ Civil, Non-Traffic (LCA 2)
☐ Civil, Traffic (LCI 2)

CONTRACT/COMMERCIAL

- ☐ Breach of Contract (COM 2)
☐ Commercial Contract (COM 2)
☐ Commercial Non-Contract (COL 2)
☐ Contractor Bond Complaint (COM 2)
☐ Third Party Collection (COL 2)

PROTECTION ORDER

- ☐ Civil Harassment (HAR 2)
☐ Domestic Violence (DVP 2)
☐ Extreme Risk Protection Order (XRP 2)
☐ Foreign Protection Order (FPO 2)
☐ Sexual Assault Protection (SXP 2)
☐ Stalking (STK 2)
☐ Vulnerable Adult Protection (VAP 2)
☐ Extreme Risk Protection Order (XRP 2)
☐ Extreme Risk Prot. Order Under 18 (XRU 2)

JUDGMENT

- ☐ Abstract Only (ABJ 2)
☐ Foreign Judgment (FJU 2)
☐ Judgment, Another County (ABJ 2)
☐ Judgment, Another State (FJU 2)
☐ Tax Warrant (TAX 2)
☐ Transcript of Judgment (TRJ 2)

OTHER COMPLAINT/PETITION

- ☐ Abusive Litigation (ABL 2)
☐ Action to Compel/Confirm Private Binding Arbitration (MSC 2)
☐ Ballot Title (BAT 2)
☐ Change of Name (CHN 2)
☐ Petition for Certificate of Restoration of Opportunity (CRP 2)
☐ Deposit of Surplus Funds (MSC 2)
☐ Emancipation of Minor (EOM 2)
☒ Injunction (INJ 2)
☐ Interpleader (MSC 2)
☐ Malicious Harassment (MHA 2)
☐ Minor Settlement (No guardianship) (MST 2)

- ☐ Petition for Civil Commitment (Sexual Predator)(PCC 2)
☐ Property Damage-Gangs (PRG 2)
☐ Restoration of Firearms Rights (RFR2)
☐ Public Records Act (PRA 2)
☐ Relief from Duty to Register (RDR2)
☐ School District – Required Action Plan (SDR 2)
☐ Seizure of Property from Commission of Crime (SPC 2)
☐ Seizure of Property Resulting from a Crime (SPR 2)
☐ Subdivision Election Process Review (SER 2)
☐ Subpoenas (MSC 2)
☐ Voter Election Law Review (VEP 2)

PROPERTY RIGHTS

- ☐ Condemnation (CON 2)
☐ Foreclosure (FOR 2)
☐ Land Use Petition (LUP 2)
☐ Property Fairness (PFA 2)
☐ Quiet Title (QTI 2)
☐ Unlawful Detainer (UND 2)

TORT, MEDICAL MALPRACTICE

- ☐ Hospital (MED 2)
☐ Medical Doctor (MED 2)
☐ Other Health Care Professional (MED 2)

TORT, MOTOR VEHICLE

- ☐ Death (TMV 2)
☐ Non-Death Injuries (TMV 2)
☐ Property Damage Only (TMV 2)
☐ Victims of Motor Vehicle Theft (VVT 2)

TORT, NON-MOTOR VEHICLE

- ☐ Asbestos (PIN 2)
☐ Other Malpractice (MAL 2)
☒ Personal Injury (PIN 2)
☐ Products Liability (TTO 2)
☐ Property Damage (PRP 2)
☐ Wrongful Death (WDE 2)

WRIT

- ☐ Habeas Corpus (WHC 2)
☐ Mandamus (WRM 2)
☐ Restitution (WRR 2)
☐ Review (WRV 2)
☐ Miscellaneous Writs (WMW 2)

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

State and Federal Telemarketing law violations

Please Note: Public information in court files and pleadings may be posted on a public Web site.

Honorable Derek J. Vanderwood

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AUG 12 2021

Scott G. Weber, Clerk, Clark Co.

10:16

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF CLARK**

NATHEN BARTON,

Plaintiff

v.

AMERICAN PROTECTION PLANS LLC

Defendant

Case No. 21 2 01264 06

SUMMONS (20 DAYS)

TO THE DEFENDANT: A lawsuit has been started against you in the above entitled court by Nathen Barton, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what she or he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

1 You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand
2 must be in writing and must be served upon the person signing this summons. Within 14 days
3 after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on
4 you of this summons and complaint will be void.

5 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
6 that your written response, if any, may be served on time.

7 This summons is issued pursuant to rule 4 of the Superior Court Civil Rules of the State of
8 Washington.

9
10
11 8/12/2021

12 (dated)

13
14
15 

16 (signed)

17
18 Nathen Barton
19 (718) 710-5784
20 4618 NW 11th Cir
21 Camas WA 98607
22

23 **CLARK COUNTY SUPERIOR COURT**

24 <https://clark.wa.gov/superior-court>

25 (360) 397-2292

26 1200 Franklin Street

27 Vancouver WA 98660
28

2
10

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2021 AUG 27 AM 10:09

SCOTT G. WEBER, CLERK
CLARK COUNTY

IN THE SUPERIOR COURT, IN AND FOR THE COUNTY OF CLARK, STATE OF WASHINGTON

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Plaintiff/Petitioner

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Hearing Date:

vs.

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Defendant/Respondent

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PAGE 2 OF 2



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